

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
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ANDRE McCANTS,

Petitioner,

vs.

9:03-CV-816

ROY A. GIRDICH, Upstate Correctional Facility  
Superintendent, & ROBERT J. MURPHY, Acting  
Director of Special Housing/Disciplinary Programs,

Respondents.  
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Thomas J. McAvoy,  
Senior United States District Judge

**DECISION & ORDER**

This *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 was referred to the Hon. David E. Peebles, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.4.

The Report-Recommendation dated September 20, 2005 recommends that the petition be denied and dismissed. No objections have been filed.

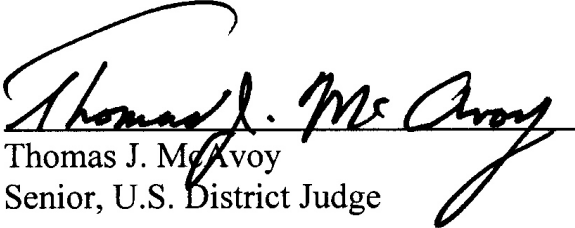
After examining the record, this Court has determined that the Report-Recommendation and Order is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation and Order for the reasons stated therein. Further, inasmuch as the Petition presents no viable issues upon which reasonable jurists could debate whether: (a) the sentence was imposed in violation of the Constitution or laws of the United States, or (b) the Court was without jurisdiction to impose

such sentence, or (c) the sentence was in excess of the maximum authorized by law, or (d) the sentence is otherwise subject to collateral attack, a Certificate of Appealability pursuant to 28 U.S.C. § 2253 is **DENIED**. It is therefore

**ORDERED** that Petitioner's writ of habeas corpus is **DENIED** and **DISMISSED**.

**IT IS SO ORDERED.**

Dated: November 29, 2005

  
Thomas J. McAvoy  
Senior, U.S. District Judge